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8 **BEFORE THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**
9

10 In the Matter of the Complaint of) Case No. 85926-66549
11 PHYLLIS W. CHENG, Director, DEPARTMENT)
12 OF FAIR EMPLOYMENT AND HOUSING, an)
agency of the State of California,)
13)
Complainant.)
14)
vs.)
15)
CITY OF SAN DIEGO, a political subdivision of)
16 the State of California,)
17)
Respondent.)

18
19 Phyllis W. Cheng, in her official capacity as Director of the Department of Fair Employment
20 and Housing (Department), claims the above-referenced administrative complaint (Director's
21 Complaint) against the City of San Diego (San Diego) was initiated based on information that San
22 Diego may have unlawfully failed to provide sexual harassment prevention training to its
23 supervisory employees, including elected and appointed officials, as required by California
24 Government Code section 12950.1, and thus may have failed to prevent discrimination from
25 occurring in violation of California Government Code section 12940, subdivision (k). The
26 Department further alleges in the Director's Complaint that San Diego may have discriminated
27 against individuals on the basis of sex.



1 The Department has completed its investigation with respect to the Director's Complaint and
2 discussed its findings with San Diego.

3 The Department and San Diego (collectively, Parties) wish to resolve the action. Thus, the
4 Parties enter into this Settlement Agreement (Agreement). In exchange for the promises and
5 representations set forth herein, the Parties agree to settle the matter as follows:

6 1. The Parties agree that this Agreement will go into effect on the date it has been
7 approved and signed by all Parties.

8 2. The Parties agree that this Agreement does not represent any admission of liability by
9 San Diego or any admission that the allegations contained in the Director's Complaint have any
10 validity.

11 3. In exchange for the promises of the Department contained in this Agreement, San
12 Diego agrees to take the following affirmative steps:

13 a. San Diego will comply with Government Code section 12950.1 by providing
14 at least two hours of online sexual harassment prevention training to all supervisory employees,
15 including all elected and appointed officials, within six months of their hire, election or appointment
16 date, and every two years thereafter. The Department has approved the online training course San
17 Diego is currently using as of the date of this Agreement. If San Diego makes any material change
18 to its online sexual harassment prevention training course, such as obtaining a course through a
19 different vendor, the City must notify the Department of the change by contacting Gregory Mann,
20 and the Department shall then have ten days to provide its approval or disapproval of the change.
21 For disability, language access and/or other business reasons, San Diego may also provide
22 alternative classroom or other effective interactive sexual harassment prevention training, so long as
23 such training meets the requirements of Government Code section 12950.1.

24 b. San Diego will institute a procedure to ensure that each supervisory employee,
25 including all elected and appointed officials, taking San Diego's two-hour sexual harassment
26 prevention training confirms that he or she – not a surrogate – is the person actually completing the
27 sexual harassment prevention training. San Diego may choose to add a declaration to the current



1 online sexual harassment prevention training that must be acknowledged by the trainee, include with
2 the current online sexual harassment prevention training a separate declaration that must be signed
3 by the trainee, or institute some other procedure in an effort to ensure that the trainee completing the
4 two-hour sexual harassment prevention training is actually the person he or she claims to be.

5 c. Should any supervisory employee, including all elected and appointed
6 officials, refuse or otherwise fail to complete San Diego's two-hour sexual harassment prevention
7 training within six months of his or her hire, election or appointment date, and once every two years
8 thereafter, San Diego will immediately notify the Department of the individual's refusal or failure to
9 timely complete the training. Upon notification from San Diego, the Department will in its
10 discretion take all steps necessary to enforce Government Code section 12950.1.

11 d. For five years, running from the effective date of this Agreement, San Diego
12 will provide the Department with reports every six months on San Diego's sexual harassment
13 prevention training programs. Specifically, San Diego will provide a report every six months
14 identifying all supervisory employees, including all elected and appointed officials, with their titles,
15 who completed San Diego's two-hour sexual harassment prevention training during the previous six
16 months; the date(s) upon which the training was taken and completed; the start and stop times of the
17 training; and whether the trainee passed the training. San Diego will also identify all supervisory
18 employees, including all elected and appointed officials, who, during the previous six months, failed
19 to timely complete the two-hour sexual harassment prevention training within six months of their
20 hire, election or appointment dates, or once every two years thereafter.

21 e. With San Diego's first set of reports to the Department, submitted no later
22 than six months from the effective date of this Agreement, San Diego will submit proof in the form
23 of a letter addressed to Phyllis W. Cheng, Director, Department of Fair Employment and Housing, at
24 2188 Kausen Drive, Suite 100, Elk Grove, California 95758, that San Diego is in compliance with
25 this Agreement.

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1 4. In exchange for the promises of San Diego contained in this Agreement, the
2 Department agrees to:

3 a. Withdraw the Director's Complaint and close the investigation of the
4 Director's Complaint.

5 b. Refrain from instituting or causing to be instituted any action in state or
6 federal court, or before any state, local or federal government entity, based on San Diego's alleged
7 failure to comply with Government Code section 12950.1.

8 5. The Department reserves the right to:

9 a. Make public the terms of this Agreement;

10 b. Conduct compliance reviews over the next five years from the effective date
11 of this Agreement to determine whether such Agreement is being fully obeyed and implemented;

12 c. Bring an action in the Superior Court of the State of California if it believes,
13 on the basis of evidence presented to it, that San Diego has violated this Agreement after notice to
14 comply; and

15 d. Process and investigate any other complaints against San Diego by any other
16 person. The Department's participation in this Agreement is limited to the particular factual
17 allegations of the Director's Complaint. In other words, this Agreement does not affect the rights of
18 any other person who may want to file a complaint of discrimination against San Diego.

19 6. This Agreement shall be construed and enforced pursuant to the laws of the State of
20 California. Should any provision of this Agreement be held invalid or illegal, such invalidity or
21 illegality shall not invalidate the whole of this Agreement. The Agreement shall be construed as if it
22 did not contain the invalid or illegal part and the rights and obligations of the parties shall be
23 construed and enforced accordingly.

24 7. This document may be executed in duplicate originals, each of which shall be equally
25 admissible in evidence. A fax or scanned signature shall have the same effect as an original.

26 8. The terms of this Agreement are contractual in nature and are not merely recitals.

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1 9. Time is of the essence in this Agreement.

2 **THIS IS AN IMPORTANT LEGAL DOCUMENT.**
3 **BY SIGNING THIS DOCUMENT YOU WARRANT THAT YOU**
4 **HAVE READ THE DOCUMENT IN ITS ENTIRETY AND FULLY**
5 **UNDERSTAND THE TERMS AND CONDITIONS SET FORTH HEREIN**

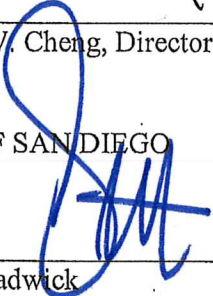
6 DEPARTMENT OF FAIR EMPLOYMENT AND
7 HOUSING

8 Dated: December 17, 2013

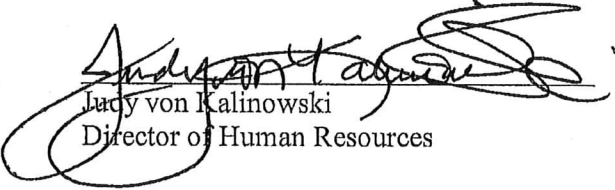
9 
Phyllis W. Cheng, Director

10 CITY OF SAN DIEGO

11 Dated: December 17, 2013

12 
Scott Chadwick
13 Chief Operating Officer

14 Dated: December 17, 2013


15 
Judy von Kalinowski
16 Director of Human Resources

17 APPROVED AS TO FORM:

18 Dated: December 17, 2013

JAN I. GOLDSMITH, City Attorney

19 By:

20 
Kristin M. J. Zlotnik
21 Deputy City Attorney
22 Attorneys for the City of San Diego
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